

PT 98-16

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**AMERICAN CATHOLIC
PRESS,
APPLICANT**

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

Docket No: 95-16-700

Real Estate Exemption

**For 1995 Tax Year
P.I.N. 29-22-104-015**

Cook County Parcel

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Edward J. McGillen of Carrol, Hartigan, Farmer, Cerney & McGillen, Ltd. on behalf of American Catholic Press.

SYNOPSIS

Cook County Parcel Index Number 29-22-104-015 (hereinafter the “subject property” or “subject parcel”) was exempted from property taxes for 11% of the 1995 tax year.¹ This proceeding raises the limited issue of whether the subject parcel should have been exempted for an additional 81% of the 1995 tax year.²

¹ The 11% figure represents the period from November 22, 1995 through December 31, 1995.

² The 81% figure represents the period from January 31, 1995 through November 22, 1995.

This controversy arose as follows:

On March 21, 1996, American Catholic Press (hereinafter “ACP”) filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the “Board”). Dept. Group Ex. No. 1, Doc. B. The Board reviewed the complaint and on April 23, 1996, recommended that an exemption be granted for 11% of the 1995 tax year. On January 3, 1997, the Illinois Department of Revenue (hereinafter the “Department”) adopted the Board’s recommendation. Dept. Ex. No. 2. ACP filed a timely appeal seeking to have the subject property exempted for an additional 81% of the 1995 tax year. On June 2, 1997, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence, it is recommended that the subject parcel be granted a property tax exemption for the additional 81% of the 1995 tax year.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department’s jurisdiction over this matter and its position that the subject parcel was in exempt use for 11% of 1995.
2. The subject parcel is located at 16565 S. State Street, South Holland, Illinois. Dept. Gr. Ex. No. 1.
3. Father Michael Gilligan (hereinafter “Gilligan”) is a Roman Catholic priest and the president and executive-director of ACP. He receives no compensation from ACP. Tr. pp. 8, 14.

4. The subject property was purchased in January of 1995, and, on the advice of counsel, was placed in a land trust which named Gilligan as the beneficiary. Tr. pp. 23-24; App. Ex. Nos. 1 & 2.
5. On November 22, 1995, ACP acquired the subject property from Gilligan's land trust. Tr. p. 9.
6. From January 31, 1995 to November 22, 1995, ACP was the sole user of the subject property. ACP did not pay Gilligan any rent and there was no lease agreement. Tr. p. 35.
7. From January 31, 1996 through November 22, 1995, ACP used the subject property to:
 - (a) do research and writing for priests;
 - (b) hold prayer services; and
 - (c) edit and produce liturgical materials.Tr. pp. 25-26.
8. After November 22, 1995, ACP's use of the subject property was identical to its use of the subject property between January 31, 1995 and November 22, 1995. Tr. pp. 19-20.
9. The subject parcel is improved with a roughly 4,000 square foot building. Tr. p. 28.
10. Since January 31, 1995, approximately 5% of the building has been used as a residence by Gilligan. Tr. p. 28.

11. Since January 31, 1995, the remaining 95% of the building has been used as ACP offices, a chapel, a storage area, a shipping area, and areas for producing the liturgical materials. Tr. pp. 25-27.
12. Gilligan is not required to live in the building as a part of his job as a priest. However, ACP requires him to live in the building for security purposes because the subject property is located in a area which has a high crime rate and there had been a history of break-ins. If not for security concerns, and the need to let volunteers in at irregular hours, Gilligan could just as easily live in his parish rectory. Tr. pp. 31-33.
13. ACP was organized to produce periodicals, hymnals, books, pamphlets and video tapes, which show people how to pray and celebrate religious services. Tr. pp. 14-17.
14. Roman Catholic churches support much of the work ACP does either through payments or donations. Tr. p. 20.
15. ACP does not produce periodicals for profit. If a publication produces a profit, that money is used to subsidize other publications which are distributed a low cost. Tr. p. 17.
16. Approximately 20% of ACP's publications are distributed free of charge. Tr. pp. 21-23.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption for the additional 81% of the 1995 tax year. Accordingly, under the reasoning

given below, the determination of the Department that the above-captioned parcel qualifies for exemption for only 11% of the 1995 tax year under Section 15-40 of the Property Tax Code (35 ILCS 200/15-40 (1996)) should be modified to reflect exemption for a total of 92% of the 1995 tax year. In support thereof, I make the following conclusions:

The Department concluded that the subject property satisfied the religious exemption requirement during the 11% of the year when the property was titled to and owned by ACP. ACP now argues that the subject property should also have been exempt for the 81% of the year during which the subject property was titled to Gilligan. The law and the facts support ACP's position.

Prior to 1909, the law required that religious property exemptions would be granted only if the party using the property for religious purposes also owned the property. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). Since that time however, statutory changes have eliminated the ownership requirement and the test of exemption has become use, not ownership. *Id.*

Section 15-40 of the Property Tax Code provides:

Religious purposes, orphanages, or school and religious purposes. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such denominations, and

including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church religious institution, or denomination requires that the above listed persons who perform religious or related activities shall, as a condition of their employment or association, reside in the facility. (Emphasis added.) 35 ICLS 200/15-40 (1996).

As the above emphasized statutory language reveals, today there are two main prerequisites for a religious property tax exemption. First, the property in question must be used exclusively for religious purposes. Second, the property in question must not be leased or otherwise used with a view to a profit.

Publishers of religious materials are considered to be operating for “religious purposes” where the income from their sales is not used to generate any form of profit. Compare Inter-Varsity Christian Fellowship v. Hoffman, 62 Ill. App. 3d 798 (1978) (publisher found to be operating for religious purposes where substantial portions of the organizations publications were provided free or below cost and organization retained no real profit) with Scripture Press Foundation v. Annunzio, 414 Ill. 339 (1953) (no “religious purposes” where for-profit organization was re-organized as a not-for-profit corporation, but continued to generate a substantial profit which flowed into a capital surplus which, upon dissolution, could be distributed by the members and officers as they saw fit without any limitation whatsoever). Here, from January 31, 1995 through November 22, 1995, ACP used the subject property primarily for publishing religious materials which were either given away or sold at such low cost that ACP did not generate profits. Tr. p. 17. This usage was identical to ACP’s usage of the subject

property from November 22, 1995 through December 31, 1995. Tr. p. 19. Thus, the subject property was being used by ACP for religious purposes not only from November 22, 1995 through December 31, 1995, but also from January 31, 1995 through November 22, 1995.

Having determined that the subject property was being used for religious purposes between January 31, 1995 and November 22, 1995, the question becomes whether the subject property was leased or otherwise used with a view to a profit during that period. At the hearing there was express testimony from two witnesses that Gilligan had no lease agreement with ACP and received no rent or other compensation from ACP. Tr. pp. 13-14, 35. Moreover, there is nothing in the record suggesting that ACP leased the subject property or otherwise used it with a view to a profit. In fact, testimony regarding ACP's use of the subject property between January 31, 1995 and November 22, 1995, reveals that such use was "exactly the same" as ACP's use of the subject property between November 22, 1995 and December 31, 1995. Tr. p. 19.

The only difference between the January 31, 1995 to November 22, 1995 time period, and the November 22, 1995 to December 22, 1995 time period, was who held legal title to the subject the subject property. However, as noted above, the fact that the party claiming the exemption was not the legal owner of the property is no longer a proper basis upon which to deny a religious exemption. See Bracher, supra; American National Bank and Trust Company v. Department of Revenue, 264 Ill. App. 3d 919 (1988). Thus, there is no legal or factual basis for granting ACP an exemption for the November 22, 1995 to December 22, 1995 time period, while denying an exemption for the January 31, 1995 to November 22, 1995 time period.

WHEREFORE, for the reasons stated above, I recommend that the subject parcel be exempt from real estate taxes for 92% of the 1995 tax year which represents that period from January 31, 1995 through December 31, 1995, during which the subject property was used by ACP for religious purposes.

Date

Robert C. Rymek
Administrative Law Judge